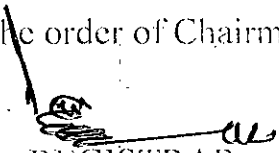


FORM OF ORDER SHEET

Court of _____

Case No.- 626/2023


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/03/2023	<p>The appeal of Mr. Said Ul Islam resubmitted today by Mr. Irfan Ali Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR,</p>

The appeal of Mr. Said Ul Islam son of Khanadan r/o Heroshah Tehsil Dargai Malakand received today i.e. on 16.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal against the impugned order 18.10.2021 is not attached with the appeal the same be placed on it.
- 2- Copy of retirement order dated 18.10.2021 mentioned in the heading of appeal (Annexure-A) is not attached with the appeal.
- 3- Copy of final/appellate order is not attached with the appeal.
- 4- Certificate be furnished that whether any appeal on the subject matter has earlier been filed in this Tribunal.

No. 981 /S.T,

DL 17/03 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Irfan Ali Yousafzai Adv.
High Court at Peshawar.

Re-submitted.

- 1 Copy of departmental appeal is annexed at page-No-33 Annexure-F. Promotion
- 2 Copy of retirement order is annexed at page 34 annexure-H.
- 3 The final order is at page-34.
- 4 Certificate is furnished at page-7.

All objections were removed please place before the Bench.



21-3-2023

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 626 /2023

Said Ul Islam.....**Appellant**

V E R S U S

Govt. of KPK and others.....**Respondents**

APPLICATION FOR FIXATION OF
ABOVE MENTIONED SERVICE
APPEAL BEFORE PRINCIPAL SEAT AT
PESHAWAR

Respectfully Sheweth:

1. That the accompanying service is being filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That same nature cases already argued by this Hon'ble Tribunal which are fixed for final orders on 28/03/2023.
3. That the instant appeal be fixed before this Hon'ble Tribunal along with other cases.

It is, therefore, most humbly prayed that on acceptance of this application, the instant appeal be fixed before Principal Seat at Peshawar along with other same nature cases.

Through

Petitioner



Irfan Ali Yousafzai

Advocate, High Court,
Peshawar

Date: 16/03/2023

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 626 /2023

Said Ul Islam.....Appellant

V E R S U S

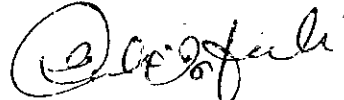
Govt. of KPK and others.....Respondents

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal along with affidavit	*	1-9
2.	Application along with affidavit	*	10
3.	Copy of relevant document	A	11
4.	Copy of promotion order	B	12
5.	Copy of the rules	C	13-21
6.	Copy of rules dated 12/12/2013	D	22
7.	Copy of the amendments	E	23-24
8.	Copy of the act	F	25-31
9.	Copy of the application	G	32-33
10.	Copy of the retirement order	H	34
11.	Copy of the rules dated 21/10/2021	I	35-36
12.	Copy of order dated 29/11/2022	J	37-64
	Wakalatnama	*	65


Appellant

Through



Irfan Ali Yousafzai

Advocate, High Court,
Peshawar

Cell# 0314-9070658

Date: 16/03/2023

(1)

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 626 /2023

Said Ul Islam S/o Khanadan R/o Heroshah Tehsil
Dargai, District Malakand.....**Appellant**

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Home & Tribal Affairs Department, Civil Secretariat at Peshawar.
3. Commandant Malakand Levies/Deputy Commissioner, District Malakand at Batkhela.

.....**Respondents**

APPEAL UNDER SECTION 4 OF KP
SERVICES TRIBUNAL ACT 1974
AGAINST THE IMPUGNED
RETIREMENT ORDER DATED
18/10/2021 OF THE APPELLANT MAY
KINDLY BE DECLARE UNLAWFUL, UN-
CONSTITUTIONAL AND VOID-AB-
INITIO

Prayer in Appeal:

On acceptance of this service appeal, the
impugned retirement order of the appellant dated

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26/01/2022 and the impugned service rules/notification dated 22/03/2021 and 21/10/2021 may very kindly be set aside and the appellant be reinstated into service with all back benefits.

Respectfully Sheweth:

1. That the appellant was appointed in the year 1988 as constable in the Malakand Levies Force by the competent authority after fulfillment all the codal and legal formalities. **(Copy of the relevant document is attached as Annexure-A)**
2. That the appellant was promoted to the post of Naib Subedar on 26/05/2016. **(Copy of promotion order is attached as Annexure-B)**
3. That the rules for maintaining public peace and tranquility in the area, the Govt. was pleased to promulgated Malakand and PATA Levies Rules 1962.
4. That on 15/02/2023, The Govt. of Khyber Pakhtunkhwa was pleased to promulgated Provincially Administered Tribal Area (PATAS) Federal Levies Force Service (Amended) Rules

2013. **(Copy of the rules are attached as Annexure-C)**

5. That on 12/12/2013, the Provincial Govt. was pleased to bring certain amendment in schedule 1 of Rule 2 (4) and schedule 3 of Rule 17 under the Provincially Administered Tribal Area FATA Force Amendment Rules 2013. **(Copy of rules dated 12/12/2013 are attached as Annexure-D)**

6. That on 25/08/2016, the provincial Govt. was pleased to amend the rules further and schedule III of the Rules 2013 and 2014. **(Copy of the amendments is attached as Annexure-E)**

7. That the Constitution (25th Amendment) Act of 2018, the Provincial Govt. was pleased to pass Khyber Pakhtunkhwa Levies Force Act 2019, wherein the services of the appellant were permanently absorbed in KP Police under the Khyber Pakhtunkhwa Police Act 2017 in this respect the employees of the levies were at par with the regular police. **(Copy of the act is attached as Annexure-F)**

8. That the appellant has been served with great zeal and zest and there is no complaint against the appellant in his entire service.
9. That the appellant was eligible for the post of Subidar since 21/03/2021, an application was submitted before the competent authority. **(Copy of the application is attached as Annexure-G)**
10. That the appellant is eligible for the cited post of Subidar since 21/03/2021, but interim relief has been issued by this Hon'ble Court in the Writ Petition No. 732-M/2021, so the appellant has been retired on 18/10/2021 owing of the interim relief issued by this Hon'ble Court and the appellant was retired before completing his service tenure. **(Copy of the retirement order is attached as Annexure-H)**
11. That the Provincial Government notified new levies rules dated 21/10/2021, and the appellant is a eligible in the cited rules. **(Copy of the rules dated 21/10/2021 is attached as Annexure-I)**
12. That a larger Bench of the Hon'ble Peshawar High Court, Peshawar heard the connected petitions including the Writ Petition No. 1206-

5

M/2021 of the appellant on 29/11/2022. Consequently the Hon'ble Peshawar High Court, Peshawar decided that personnel of levies force are civil servants and their employment matters would be dealt with by this Hon'ble Tribunal. **(Copy of order dated 29/11/2022 is attached as Annexure-J)**

13. That the appellant feeling aggrieved from the retirement without promotion, , the appellant approaches this Hon'ble Tribunal inter alia on the following grounds:

GROUND S:

- A. That the impugned actions and inactions of the respondents are illegal, unlawful, without lawful authority and jurisdiction, liable to be struck down.
- B. That the impugned act of amending the relevant Service Rules to the detriment o the appellant and subsequent retirement is illegal and un-Constitutional. Hence the same acts are liable to be declared as such.
- C. That it is settled law that service rules cannot be amended to the detriment of public sector

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employees. Even, if they are so amended, the same having prospective effect cannot be applied against the existing employee.

D. That after the 25th Constitutional Amendment, the new Constitutional regime demanded streamlining of the erstwhile Tribal Areas with the rest of the Province. So much so, Levies personal serving in erstwhile FATA and Khasadar Force were accommodated to a larger extent where the Provincial Assembly passed an Act aimed at streamlining the service structure of Ex.FATA Levies Force. The Act not only provides uniform retirement age i.e. 60 years for the whole Force but rather enjoins upon the Provincial Government to take steps towards absorption of the said Levies and Khasadars in regular police. Regrettably, the appellant have been treated in violation of the Constitutional spirit particularly after the 25th Constitutional Amendment and subsequent orders.

E. That same nature cases already argued by this Hon'ble Tribunal which are fixed for final orders on 28/03/2023.

F. That any other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

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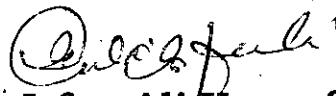
It is, therefore, most humbly prayed that on acceptance of this service appeal, the impugned retirement order of the appellant dated 18/10/2021 may kindly be declared as illegal and the same be set aside. Consequently, the appellant may be held entitled to be promoted to the post of Subedar and then retired from service.

OR

Any other relief may deemed fit in the circumstances of the law may also be granted in favour of the appellant against respondent.


Appellant

Through


Irfan Ali Yousafzai
Advocate, High Court,
Peshawar

Date: 16/03/2023

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BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. _____/2023

Said Ul Islam.....**Appellant**

V E R S U S

Govt. of KPK and others.....**Respondents**

APPLICATION FOR CONDONATION
OF DELAY (IF ANY)

Respectfully Sheweth:

1. That the accompanying service is being filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That the appellant/applicant writ petition was transfer to Principal Seat and the case was referred all the case to this Hon'ble Tribunal for decision, and the applicant was unaware to file Service Appeal to this Hon'ble Tribunal.
3. That same nature cases already argued by this Hon'ble Tribunal which are fixed for final orders on 28/03/2023.



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4. That delay in filing the titled service appeal is neither willful nor deliberate but due to reason mentioned above.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled Service Appeal may kindly be condoned in the interest of justice.

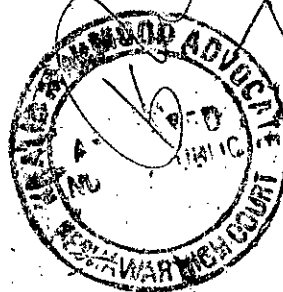
Through

Date: 16/03/2023


Petitioner

Irfan Ali Yousafzai
Advocate, High Court,
Peshawar

AFFIDAVIT

I, **Said Ul Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand**, do hereby solemnly affirm and declare on oath that the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.




DEPONENT

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BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. _____/2023

Said Ul Islam.....Appellant

V E R S U S

Govt. of KPK and others.....Respondents

AFFIDAVIT

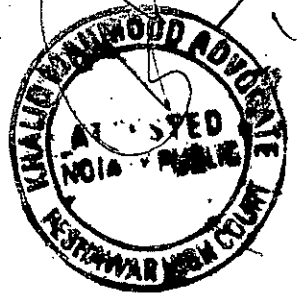
I, **Said Ul Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand**, do hereby solemnly affirm and declare on oath that the contents of accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Identified by:

D E P O N E N T

Irfan Ali Yousafzai

Irfan Ali Yousafzai
Advocate, High Court,
Peshawar.



Annexure (B)

(12)



OFFICE OF THE DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 5987/LC
DATED MALAKAND THE 26/05/2016

OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee, the following Levy personnel are hereby promoted to their next higher rank noted against each on the basis of seniority- cum- fitness with effect from 03/5/2016(FN):-

S.No	Name of Levy personnel	From	To
1	No. 3826 Said Islam	Havildar	Naib Subedar
2	No. 4243 Sultan Muhammad	Naik	Havildar
3	No.4328 Inam-Ul-Haq	Lance Naik	Naik
4	No.4428 Sardar Ali Shah	Sepoy	Lance Naik

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

No.5968-72/LC

Copy forwarded to the:-

1. Secretary, SAFRON Division, Islamabad, for information please.
 2. Secretary, Home & Tribal Affairs, Department, Khyber Pakhtunkhwa, Peshawar for information please.
 3. Commissioner, Malakand Division at Saidu Sharif, Swat for information please.
 4. District Accounts Officer, Malakand.
 5. Subedar Major Malakand Levies.
- For information and necessary action.

DC/ COMMANDANT
MALAKAND LEVIES MALAKAND

CTC
/

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 15TH FEBRUARY, 2013.

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, the 4th February 2013

SERVICE RULES FOR FEDERAL LEVIES FORCE IN PATA

In exercise of the powers conferred by Section 9 of the PATA Levies Force Regulation, 2012 the Provincial Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

1. Short title and commencement- (1) These rules may be called Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013.

(2) They shall come into force at once.

2. Definitions.- (1) In these Rules, unless the context otherwise require, the following expressions shall have the meaning hereby respectively assigned to them, namely:-

- (a) "Appointing Authority" means the appointing authority specified in rule 4;
- (b) "Commandant" means Commandant of the Force, who shall be the Deputy Commissioner in their respective jurisdiction;
- (c) "Deputy Commandant (Operation)" means an Assistant Commissioner or any officer of the District designated as such by the provincial government who shall be Deputy Commandant (Operation) of the Force in PATA, to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed; and who shall be responsible to the Commandant for operational matters of the Force in PATA.
- (d) "Deputy Commandant (Administration)" means Deputy Commandant (Administration) of the Force, who shall be an officer of the provincial government or any officer of the District designated as such by the provincial government to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed and who shall be responsible to the Commandant for administration and establishment matters of the Force in PATA.
- (e) "Government" means the Government of Khyber Pakhtunkhwa;
- (f) "Home Department" means Provincial Home & Tribal Affairs Department;
- (g) "Initial recruitment" means appointment made other than by promotion or by transfer;
- (h) "Schedule" means the Schedule appended to these rules;

[Handwritten signature]

(i) "Selection or Promotion Committee" means a Committee for recruitment or as the case may be, promotion of Force personnel as notified by the Government;

(j) "Service" means the levies service;

(2) The expression used but not defined herein shall have the same meanings as are assigned to them under the PATA Levies Force Regulation 2012.

3. **Composition and eligibility of the Force.**- (1) The Force shall comprise of the posts specified in Schedule-I and such other posts as may be determined by the Government from time to time.

(2) Recruitment to the Force shall be made in accordance with the requirement specified in Schedule-I. No person shall be appointed unless he fulfills the following conditions:-

(a) The candidate shall be a citizen of Pakistan and bonafide resident of the respective district of Khyber Pakhtunkhwa.

(b) The candidate shall be, in good mental and bodily health and free from physical defect, which likely to interfere in the efficient discharge of his duties.

(c) Medical Superintendent of the respective district headquarter hospital shall issue a certificate of medical fitness to the candidate.

(d) Recruitment to all ranks of the Force shall be made from amongst those persons having a minimum height of 5'7" and chest measurement of 32 1/2" with an age of not less than eighteen years and not more than twenty-five years on the last date of submission of application;

(e) No person (except those who are already in Government Service) shall be appointed to the Force unless he produces a certificate of character from the Principal of Academic Institution last attended or a certificate of character from two gazetted officers from respective districts, not being his relative and who are well acquainted with his character; and

(f) No person who is married to foreign national shall be eligible for appointment in the Force, unless allowed by the Government, in writing.

4. **Appointing Authority.**- (1) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar. Whereas promotion to the rank of Subedar Major and above, the authority shall rest with the provincial government.

(2) Appointment to the post shall be made in accordance with the provisions contained in Schedule-I read with Rule-3 of these rules.

(3) Appointment either through initial recruitment or by promotion shall be made through duly constituted Selection/promotion Committees.

Provided that in case of raising of force in a new district, the Commandant shall have the authority to recruit ex-servicemen above the rank of sepoy on contract basis for a period of one year extendable for a further period of one year but not exceeding three years in total, with prior approval of the government.

It is further provided that the ex-serviceman so appointed on contract shall not be more than forty five years of age.

5. **Probation.**- Persons appointed to posts by initial recruitment, promotion or transfer shall remain on probation for a period of one year extendable by a further period of one year. If no order is issued on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended for further one year. If no order is issued on the completion of extended period, the probation shall be deemed to have been terminated.

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6. Training - (1) All newly recruited personnel of the Force shall undergo six months pre-service training before being assigned duties of the rank for which they selected. Initially, the Appointing Authority shall arrange for appropriate training till a proper Levies Training Center is established.

(2) The pre-service training mentioned in sub-rule (1) may contain training on basic laws, investigation techniques, mob control, basic intelligence, arrest and detention procedure, jail duties, drill, weapons training, field craft, bomb disposal, counter assault, traffic control, raids, watch & ward etc. Proper training syllabus and modules shall be developed through mutual consultation with local law enforcing agencies by the Home Department.

7. Resignation. - No member of the Force shall resign before the expiry of the first three months of his recruitment or he shall deposit an amount equal to his three months pay in lieu of his three months essential service.

8. Seniority and promotion. - (1) Promotion shall be strictly on seniority cum fitness basis as well as on the required length of service as specified in Schedule-I.

(2) The service of a personnel by initial recruitment, promotion or transfer may be dispensed with or reverted if, in the opinion of the competent authority his work and conduct is not satisfactory during probation period or due to abolishment of posts, as the case may be.

Provided that in case of dispensing with their service or reversion the concerned authority shall record cogent reasons for such action in writing.

(3) The seniority list of the Force shall be maintained at district level. Commandant shall be responsible for maintaining the seniority list of the force and shall notify annually.

9. Transfer during service. - Every member of the service shall be liable to serve anywhere within PATA with the prior approval of the Commissioner, Matakund Division.

10. Punishment. - After satisfying himself regarding punishable acts (as referred in Schedule-II) through a charge duty framed in writing, necessary punishments specified in Schedule-IV may be awarded by the respective authority.

Provided that punishment so awarded shall be duly incorporated in service rolls / service dossier accordingly.

11. Appeal. - If any personnel of the force is aggrieved by any order issued under these rules, within thirty days of communication to him of such order, may prefer an appeal to the competent authority.

Provided that no appeal shall lie against the punishments specified at S.No. (1) and (2) of Schedule-IV.

12. Awards and commendations. - (1) Force personnel may be given special award and commendation certificate for devotion to duty, demonstration of gallantry and such achievement in the performance of duty, in the manners as prescribed by the Commandant, and shall be made part of the service rolls / service dossier.

(2). Force personnel, if embraces martyrdom in the discharge of his duty, will be given proper Guard of Honour at the time of burial.

13. Service Record. - Proper service rolls / service dossiers of all Force Personnel shall be maintained in Levy Office of each district. Annual reports of all Havaldars and Junior Commissioned Officers (JCOs) will also be maintained for the purpose of promotion.

14. Uniform. - The levy personnel shall attire black shalwar qamees with brown chappi, white socks, black berette cap and black belt whereas the JCOs will wear brown belt during duty hours.

15. Leave. - (1) Leave may be granted depending on the exigencies and at the discretion of the Commandant. All leave of ten days or above, will be considered as long leave and shall be granted on the recommendations of Subedar Major by the Commandant.

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ATC

(2) Casual leave may be allowed upto three days by Subedar Major. Casual leave up to nine days may be granted by the Deputy Commandant (to be notified by the Commandant) on the recommendation of the concerned JCO.

(3) Medical leave shall be granted by the Commandant on the production of medical certificate from the medical superintendent concerned.

16. Salary.-The Force personnel shall be entitled to receive pay and allowances as per their pay scales notified by the Federal Government from time to time.

17. Retirement.-All Levy personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted.

18. Conduct.-The conduct of Force personnel shall be regulated by these rules or instructions issued by Government from time to time.

19. Gratuity and pension.-All Force personnel will be entitled to pension as per prevailing Federal Government rules.

20. Compensation.- (1) The family of Force personnel shall be granted death compensation in case the Force Personnel embraces martyrdom during discharge of his duty as per rates prescribed by the Federal Government.

(2) Force personnel shall be granted compensation in case of sustaining fatal injury or injuries during the discharge of his duty. If he is declared incapacitated for further services due to such fatality, he shall be entitled to gratuity and pension as per Federal Government Rules.

(3) 5% quota shall be reserved for sons and wards of martyred in initial recruitment of Force personnel.

Provided that in case of permanently incapacitated personnel of the force during the course of duty, preference shall be given to the sons and wards of such incapacitated Force Personnel in general recruitment.

21. Funds.-Force personnel shall be governed by the provision of general provident funds, benevolent funds and group insurance as prescribed for other employees of the Federal Government.

22. Health care.-Medical facilities for the Force personnel and their families shall be catered for at Government hospitals and dispensaries at par with other employees of the Federal Government.

23. Monitoring and evaluation.- (1) Commandant or Deputy Commandant of the Force shall set up suitable number of levy posts in their respective jurisdiction and shall assign suitable number of Force personnel at each of such levy post. In case of establishment of Levy Station within their jurisdiction shall require prior approval of the government.

(2) There shall be levy line in each district, which shall have all necessary facilities including parade ground, barracks, quarter guards, koth/armoury etc.

(3) Duty Register showing the duties assigned to each individual on day-to-day basis shall be maintained in each levy post /Levy Station/Levy Lines by a levy Muharrir.

(4) Naib Subedar shall be responsible for carrying out the work assigned to Force personnel whose duties shall be entered in advance in the duty register.

(5) Registers including *roznamchas* as prescribed by the Commandant shall be maintained in every levy post/Station/Lines.

(6) Commandant, Deputy Commandant or any other officer of the District Administration shall in the course of their tours in their jurisdiction, may inspect duty register and *roznamchas* of Levy posts/stations and satisfy themselves that Force Personnel are carrying out their assigned duties. A note regarding absence from the post or from the place of duty of any Force personnel without leave, shall invariably be recorded by inspecting officers in the duty register. Such entry shall be communicated to the Commandant and Deputy Commandant (Operations) by Incharge of the post/station within twenty four

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SCHEDULE - I
See rules 4(2) and 8

A. Uniformed Force

S.#	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1.	Subedar Major (BS-16)	03 years service as Subedar	100%		
2.	Subedar (BS-13)	03 years service as Naib Subedar	100%		
3.	Naib Subedar (BS-11)	03 years service as Havaldar	100%		
4.	Havaldar (BS-8)	03 years service as Nalk	100%		
5.	Nalk (BS-7)	03 years service as Lance Nalk	100%		
6.	L/Nalk (BS-6)	03 years service as Sepoy	100%		
7.	Sepoy (BS-5)			100%	Middle pass preferably Matric
8.	Head Armourer BPS-05	05 years service as Assistant Armourer	100%		
9.	Assistant Armourer BPS-01			100%	Certificate of Armourer

B. Ministerial staff

10.	Assistant (BS-14)	KPO/ Computer Operator/ Senior clerk/ Junior Clerk (i) Minimum 5 years service as KPO/ Computer Operator; (ii) 5 years service as Senior Clerk; (iii) 7 years service as Junior Clerk	50%	50%	B.A. or equivalent for direct recruitment and by promotion seniority-cum-fitness from amongst KPO/Computer Operator/Senior clerk/Junior Clerk on the basis of their date of entry into service.
11.	KPO / Computer Operator BPS-12			100%	Intermediate with one year diploma in IT from a recognized Institute
12.	Senior Clerk (BS-9)	5 years service as Junior Clerk	100%		
13.	Junior Clerk (BS-7)		10% from lower staff with Matric	90%	Matric with a typing speed of 30 words per minutes / preferably computer literate
14.	Behishtil (BS-5)			100%	Literate
15.	Driver (BS-4)			100%	Driving License / Driving Experience
16.	Pesh Imam BPS-02			100%	Mouvi/Fazil
17.	Tracker (BS-2)	5 years service in BS-1	10%	90%	Primary Pass
18.	Naib Qasid BPS-01			100%	Literate
19.	Sweeper (BS-1)			100%	

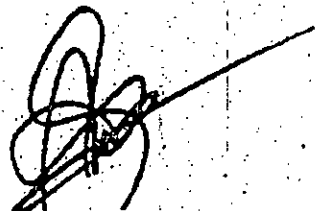
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SCHEDULE - II
(see Rule 10)

Grounds of penalty

The concerned authority may impose one or more penalties, where a personnel of the Force, in the opinion of the authority: -

- a. Is inefficient or has ceased to be efficient;
- b. Is guilty of misconduct, like unauthorized absence from leave, breach of order, disobedience, unruly behavior, passing on official secrets to unauthorized persons, etc;
- c. Is corrupt, or may reasonably be considered corrupt;
- d. Is guilty of any violation of duty;
- e. Losses, misplaces or causes harm to a weapon through negligence or lack of maintenance;
- f. Is insubordinate to his superiors;
- g. Is convicted of a criminal offence;
- h. Is guilty of cowardice, or abandons any picket, fortress, post or guard which is committed to his charge or which is his duty to defend;
- i. Is engaged in propagation of sectarian, parochial, anti-state views and controversies;
- j. Is engaged or is reasonably suspected of being engaged to excite, cause or conspire to cause or joins in any mutiny, or being present at any mutiny and does not use his utmost endeavor to suppress it;
- k. Attempts collective bargaining, conspiring or attempting to call off duty or take procession to press for the demands; or
- l. Is guilty of omission and commission under the law and rules.
- m. Deserts the service.
- n. Being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- o. Without authority, leaves his commanding officer, or his post or party, to go in search of plunder; or
- p. Quits his guard, picket, party or patrol without being regularly relieved or without leave; or
- q. Uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or without authority breaks into any house or any other place for plunder, or plunders, destroys, or damages any property of any kind; or
- r. Internally causes or spreads a false alarm or rumour during action or in post, camp, lines, or quarters.

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650 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 15th FEBRUARY, 2013

SCHEDULE -III
See Rule 17

S.#	Post/Rank	Length of service / Age
1	Subedar Major (BS-16)	38 years service or 03 years service as Subedar Major or 60 years age whichever is earlier
2	Subedar (BS-13)	35 years service or 03 years service as Subedar or 57 years age whichever is earlier
3	NalibSubedar (BS-11)	32 years service or 03 years service as NalibSubedar or 54 years age whichever is earlier
4	Havaldar (BS-8)	29 years service or 03 years service as Havaldar or 51 years age whichever is earlier
5	Naik (BS-7)	26 years service or 03 years service as Naik or 48 years age whichever is earlier
6	L/Naik (BS-6)	23 years service or 03 years service as L/Naik or 45 years age whichever is earlier
7	Sepoy (BS-5)	20 years service or 42 years age whichever is earlier

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SCHEDULE - IV
See Rule 10

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S.#	Punishment	Subedar Major and Subedar	NaibSubedar or Havaldar	Naik or Lance Naik	Sepoy
1	Extra Drill not exceeding fifteen days fatigue or other duties.			Subedar	NaibSubedar
2	Confinement to quarter guard upto fifteen days.	Commandant	Deputy Commandant	Deputy Commandant	Subedar Major
3	Censure	-do-	-do-	-do-	-do-
4	Forfeiture of approved service upto two years	-do-	-do-	-do-	-do-
5	Stoppage of increment not exceeding one month's pay	-do-	-do-	-do-	-do-
6	Fine to any amount not exceeding on month's pay	-do-	-do-	-do-	-do-
7	Withholding of promotion for one year or less.	-do-	-do-	-do-	-do-
8	Reduction from substantive rank to a lower rank or reduction in pay.	-do-	-do-	-do-	-do-
9	Dismissal or removal from service or compulsory retirement.	-do-	-do-	-do-	-do-

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Printed and published by the Manager,
Stacy. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar.

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NOTIFICATION

No. So(Levies)HD/FLW/1-1/2013/Vol.1. The competent authority has been pleased to make further amendments in Schedule-I of Rule-4(2) and Schedule-III of Rules-17 under Part II of the Regulation for PATA Levies Force, 2012 & Rule-24 of the Provincially Administered Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013 as under:-

Rule-4(2) Schedule-I

SCHEDULE-I
 See Rule 4 (2)

Uniformed Force		Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
S.No.	Post/ Rank				
	Subedar Major (BS-11)	One year service as Subedar	100%		
	Subedar (BS-13)	One year service as Naib Subedar	100%		
	Naib Subedar (BS-11)	One year service as Hawaldar	100%		
	Hawaldar (BS-8)	One year service as Naik	100%		
	Naik (BS-7)	One year service as Lance Naik	100%		
	Lance Naik (BS-6)	Five years' service as Sepoy	100%		
	Sepoy (BS-5)			100%	Middle Matric
	Head Armorer (BPS-5)	Five years' service as Assistant Armorer	100%		Middle Matric of Arms
	Assistant Armorer (BPS-1)			100%	Middle Matric of Arms

Rule-17 (Retirement): (1) All uniform levy personnel shall retire as per Schedule-III or opt for retirement after completion of 25 years of regular service and no extension beyond retirement shall be granted.

SCHEDULE-III
 Rule-17(Retirement)

S.No.	Post/ Rank	Length of service / age for retirement.
	Subedar Major (BS-11)	37 years' service or 60 years of age whichever is earlier
	Subedar BS-13	35 years' service or 60 years of age whichever is earlier
	Naib Subedar (BS-11)	33 years' service or 60 years of age whichever is earlier
	Hawaldar (BS-8)	31 years' service or 60 years of age whichever is earlier
	Naik (BS-7)	29 years' service or 60 years of age whichever is earlier
	Lance Naik (BS-6)	27 years' service or 60 years of age whichever is earlier
	Sepoy (BS-5)	25 years' service or 60 years of age whichever is earlier

[Handwritten Signature]
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Notification

No. SO(Levies)HD/FLW/ 1-1/2013 Vol.I. The competent authority has been pleased to approve further amendments in schedule I of Rule -4(2) and Schedule - III of rules 17 under Para 10 of the regulation of PATA levies Forces, 2012 & Rule 24 of the Provincially Administrated Tribal Areas (PAA) Federal Levies Force Service (Amended) rules 2013 as under :-

Rule -4(2) Schedule-I

Schedule-I
 See Rule 4(2)

A. Uniformed Force :

S.No.	Post /Rank	Eligibility for promotion	Promtion Quota	Direct quota	Qualification
1	Subedar Major (BS-16)	One year service Subedar	100%		
2.	Subedar BS-13	One year service Naib Subedar	100%		
3.	Naib Subedar (BS-11)	One year service Hawaldar	100%		
4.	Hawaldar BS 7	One year service Naik	100%		
5.	Naik (BS-7)	One year service Lance Naik	100%		
6.	Lance Naik BS-6	Five years service as Sepoy.	100%		
7.	Sepoy BS-5	-	-	100%	Middle Pass Preferably Matric
8.	Head Armorer	Assistant Armorer	100%		Middle Pass Preferably Matric with Certificate of Armorer
9.	Assistant Armorer RPS-1	-	-	100%	Middle Pass Preferably Matric with Certificate of Armorer

Rule 17 (Retirement) (1) all uniform levy personnel Shall retire as per schedule - III or they may opt for retirement after completion of 25 years of regular service and no extension in service beyond retirement shall be granted.

SCHEDULE-III
 Rule 17 (Retirement)

S.NO	Post / Rank	Length of Service / age for retirement.
1	Subedar Major (BS-16)	37 years service or 60 years of age whichever earlier
2.	Subedar BS-13	37 years service or 60 years of age whichever earlier
3.	Naib Subedar (BS-11)	37 years service or 60 years of age whichever earlier
4.	Hawaldar BS 7	37 years service or 60 years of age whichever earlier
5.	Naik (BS-7)	37 years service or 60 years of age whichever earlier
6.	Lance Naik BS-6	37 years service or 60 years of age whichever earlier
7.	Sepoy BS-5	37 years service or 60 years of age whichever earlier



Home & Tribal Affairs Department
Dated Peshawar the 25.08.2016

NOTIFICATION

No. So (Levies) HD/TLWI-1/2013/Pr.1. Consequent upon approval of the recommendations of the anomaly committee by Secretary SAFRON received vide his letter No. F.10(5)-LR/2006-Pr dated 04.08.2016, the competent authority has been pleased to partially modify the earlier Notifications of even number dated 12.12.2013 & 17.03.2014 with the following amendments in the levies service rules with immediate effect :-

1. The service of Federal Levy Force rendered before 2012 in case of PATA, Khyber Pakhtunkhwa/Settled Districts shall be counted as pensionable.
2. As Federal Government Employees, Civil Pension Rules will be applicable for all Federal Levy Force serving in PATA/Settled Districts of Khyber Pakhtunkhwa.
3. Condonation of over stay exceeding the prescribed length of service or age limit shall be allowed on case to case basis with due approval of the competent authority i.e. Secretary, SAFRON after full implications are worked out and sent to SAFRON and subsequent approval by Finance Division as the over stay was not the fault of the levy personnel.
4. The terms of Rank and Service may be included in the Schedule - III of Service Rules for PATA/Settled Districts of Khyber Pakhtunkhwa respectively with the following amendments:-

SCHEDULE - III			To be read as
Sl No	Post/Rank	For	
1	Subedar Major (BS-16)	37 years service or 60 years of age whichever is earlier.	37 years service or 60 years service as Subedar Major or 60 years of age whichever is earlier.
2	Subedar (BS-13)	35 years service or 60 years of age whichever is earlier.	35 years service or 60 years of age as Subedar or 60 years of age whichever is earlier.
3	Nalb Subedar (BS-11)	33 years service or 60 years of age whichever is earlier.	33 years service or 60 years service as Nalb Subedar or 60 years of age whichever is earlier.

Secretary to Govt of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No. & dated of even.

Copy of the above is forwarded for information and further necessary action to:-

1. The Secretary to Government of Pakistan, Ministry of SAFRON, Islamabad with reference to letters No. F.10 (5)-LR/2006/Pr dated 04.08.2016.
2. The Commissioner Hazara, Malakand, Kohat & Bannu for information.
3. The D.C./Commandant, Levies, Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lalchi Marwat & Torghar.
4. Agency /District Account Officer Malakand, Dir Upper, Dir Lower, Swat, Chitral, Hangu, Kohat, Karak, Lalchi Marwat & Torghar.
5. Section Officer (Budget) Home Department.
6. Section Officer (Court) Home Department.
7. PS to Secretary Home & Tribal Affairs Department.
8. The Manager Government Printing Press, Peshawar for publication in the official gazette Peshawar as an extra ordinary copy.

[Signature]

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Notification

Date 26.8.2016

No. So(Levies)HD/FLW/1-1/2013/Vol.1. Consequent upon approval of the recommendations of the anomaly committee by Secretary SAFRON received vide his letter No. F.10(5)LK/2006 Pr Dated: 04/08/2016, the competent authority has been pleased to partially modify the earlier notifications of even number dated 12/12/2013 & 17/03/2014 with the following amendments in the levies service rules with immediate effect.

1. The service of Federal Levy Force rendered before 2012 in case of PATA, Khyber Pakhtunkhwa / Settled Districts shall be counted as pensionable.
2. As Federal Government Employees, Civil Pension Rules will be applicable for all Federal Levy Force serving in PATA / Settled Districts of Khyber Pakhtunkhwa.
3. Condonation of over stay exceeding the prescribed length of service or age limit shall be allowed on case to case basis with due approval of the competent authority i.e. Secretary, SAFRON after full implications are worked out and sent to SAFRON and subsequent approval by Finance Division as the over stay was not the fault of the levy personnel.
4. The tenure of Rank and service may be included in the Schedule III of Service Rules for PATA/ Settled Districts of Khyber Pakhtunkhwa respectively with the following amendments.

SCHEDULE III

S No.	Post/Rank	For	To be read as
1	Subedar Major BS-16	37 years service or 60 years of age whichever is earlier	37 years service or 3 years service as Subedar Major or 60 years of age whichever is earlier
2	Subedar BS-13	35 years service or 60 years of age whichever is earlier	35 years service or 5 years service as Subedar or 60 years of age whichever is earlier
3	Naib Subedar BS- 11	33 years service or 60 years of age whichever is earlier	33 years service or 7 years service as Naib Subedar Major or 60 years of age whichever is earlier

(24)
NOTIFICATION

Dated Peshawar the 14.07.2020

No. SQ(Police-III)ND/1-32. In exercise of the powers conferred by Section 9 of the Provincially Administered Tribal Areas Levies Force Regulation 2012, the Government of the Khyber Pakhtunkhwa is pleased to direct that in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:

Amendments

In the said rules:-

- (a) For rule 17, the following shall be substituted, namely:
"17. Retirement.-- All Levies Personnel shall retire from service on attaining their age of superannuation i.e. sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service."; and
- (b) Schedule-III shall be deleted.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HOME DEPARTMENT

Copy forwarded to the:-

1. Principal Secretary to Governor's Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister's Secretariat Khyber Pakhtunkhwa, Peshawar.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, Khyber Pakhtunkhwa.
7. Provincial Election Commissioner, Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. All Heads of Attached Department in Khyber Pakhtunkhwa.
10. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
11. Accountant General of Khyber Pakhtunkhwa.
12. Director Information Khyber Pakhtunkhwa, Peshawar.
13. The Manager Government Printing & Stationery Department, Khyber Pakhtunkhwa. He is requested to publish the above Notification in the extra ordinary Gazette of Khyber Pakhtunkhwa and supply 50 Copies (Printed) of the same to the Home Department.

Section officer (Police-II)

14/7/2020

Sd/-
Date: 14-07-2020

Notification
Dated: 14/07/2020

No. So(Police-II)/HD/1-3. In exercise of the powers conferred by Section 9 of the Provincially Administered Tribal Areas Levies Force Regulation 2012. The Government of the Khyber Pakhtunkhwa is pleased to direct that in the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:

Amendments

In the said rules:-

a) For rule 17, the following shall be substituted, namely:

"17. Retirement.--- All Levies Personal shall retire from service on attaining the age of superannuation i.e. sixty (60) years, or they may opt for retirement after completion of twenty five (35) years regular service; and

b) Schedule III shall be deleted

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An Act

to provide for the maintenance of Khyber Pakhtunkhwa Levies Force and to enable its transition to Khyber Pakhtunkhwa Police.

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas have been merged in the Province of the Khyber Pakhtunkhwa, and Federal Levies Force, established under the Federal Levies Force Regulation, 2012, working in the said areas, has lost its legal status for working in the merged districts and sub-divisions;

AND WHEREAS it is in the best public interest to allow the Federal Levies Force to continue its functions in the merged districts and sub-divisions and to regulate and maintain it under the administrative control of the Government of Khyber Pakhtunkhwa;

AND WHEREAS to achieve the objectives it is expedient to give legal status to the Federal Levies Force in the merged districts and sub-divisions and to re-visit its institutional structure and functional assignment for effective discipline, better performance and optimal utility;

It is hereby enacted as follows:

1. Short title, application, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Levies Force Act, 2019.

(2) It shall apply to all the members of Levies Force.

(3) It shall extend to the districts and sub-divisions of the Province of Khyber Pakhtunkhwa as provided in the Schedule.

(4) It shall come into force at once.

2. Definitions.---In this Act, unless there is anything repugnant in the subject or context,-

(a) "Code" means the Code of Criminal Procedure, 1893 (Act of V of 1893);

(b) "Commandant" means the Commandant of the Levies Force;

(c) "Department" means the Home and Tribal Affairs Department of the Government of Khyber Pakhtunkhwa;

(d) "Deputy Director General" means the Deputy Director General of the Levies Force;

(e) "Director General" means the Director General of the Levies Force;

(f) "Government" means the Government of the Khyber Pakhtunkhwa;

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- (g) "Levies Force" means the Federal Levies Force, established under the repealed regulation and re-constituted, regulated and maintained under this Act;
 - (h) "Police" means the Khyber Pakhtunkhwa Police;
 - (i) "prescribed" means prescribed by rules;
 - (j) "Provincial Police Officer" means the Provincial Police Officer of Khyber Pakhtunkhwa Police;
 - (k) "public agency" means any department of Government, attached department, public authority, commission or autonomous body, setup under any statutory instrument, or public sector company or body corporate, owned, controlled or financed by Government;
 - (l) "repealed regulation" means the Federal Levies Force Regulation, 2012, repealed under section 15 of this Act;
 - (m) "rules" mean rules made under this Act; and
 - (n) "Schedule" means the Schedule appended to this Act.

3. Reconstitution and maintenance of Levies Force.—(1) On commencement of this Act, the Levies Force shall be re-constituted and maintained by Government in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Levies Force, consisting of-

- (a) the Director General;
- (b) the Deputy Director General;
- (c) the Commandant; and
- (d) all existing strength of members of the Levies Force working in the merged districts and sub-divisions, as specified in the Schedule.

(2) The Director General, Deputy Director General and the Commandant shall be the officers of the Police.

(3) The District Police Officer shall be assigned the additional charge of the Commandant in the same district.

(4) The Regional Police Officer shall be assigned the additional charge of the Deputy Director General in their Police Region.

(5) The Deputy Director General, who shall be appointed by Government, in consultation with the Provincial Police Officer, in such manner and on such terms and conditions as may be prescribed.

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Explanation: For the purpose of this section, Regional Police Officer and District Police Officer shall have the same meanings as are given to them, respectively, in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

4. Superintendence, administration and control of the Levies Force.—(1) The overall power of superintendence of the Levies Force shall vest in Government.

(2) The general administration and operational control of the Levies Force shall vest with the Director General to be exercised by him either directly or through the Commandant in the district.

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5. Powers and duties of the Levies Force.--(1) Notwithstanding anything contained, in any other law for the time being in force, the Levies Force shall have the parallel policing powers as are assigned to the Police under the Code.

(2) Without prejudice to the generality of the forgoing policing powers under sub-section (1), the Levies Force shall perform such institutional or organizational functions and duties as provided under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No.II of 2017).

6. Liabilities of officers and members of the Levies Force.--(1) It shall be the duty of every member of the Levies Force to obey and execute all lawful orders and instructions, issued to him by the Commandant or any other officer authorized by him in this behalf to issue such orders and instructions.

(2) The Levies Force shall be an essential service and every member thereof shall be liable to serve whenever he is required to serve by the Director General.

7. Constitution of Selection and Promotion Committees.--Government shall notify the Selection and Promotion Committees for recruitment and promotion of employees of the Levies Force.

8. Postings, transfers and distribution of the Levies Force.--(1) The Commandant shall be competent to post and transfer members of the Levies Force within the district.

(2) The Director General shall be competent to post and transfer members of the Levies Force from one district to another.

(3) Subject to the decision of the Department, a sufficient number of members of the Levies Force shall be placed at the disposal of the District Administration in performing its legally mandated functions.

9. Absorption.--(1) Notwithstanding anything, contained in any other law for the time being in force, the members of the Levies Force may be absorbed in the Police, subject to the procedure as may be determined by Government.

(2) Until their absorption in the Police, the members of the Levies Force shall be governed by their existing terms and conditions of service under the Federal Levies Force (Amended) Service Rules, 2013.

10. Assistance and support to Government functionaries.--On the requisition of the District Administration, the Commandant shall provide assistance and support to the District Administration and Heads of all public agencies in the District, required for performing their official duties.

11. Power to make rules.--Government may make rules for carrying out the purposes of this Act.

12. Act to override other laws.--The provisions of this Act shall be in force notwithstanding anything repugnant or contrary contained in any other law for the time being in force.

13. Indemnity.--Except as otherwise expressly provided in this Act, no suit, prosecution or other legal proceedings shall lie against any member of the Levies Force, Government or any other authority for anything which is done in good faith or intended to be done under this Act or the rules.

Explanation: The phrase "good faith" shall have the same meaning as given to it in section 52 of the Pakistan Penal Code, 1860 (Act No.XLV of 1860).

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14. Removal of difficulties.—If any difficulty arises in giving effect to any of the provisions of this Act, the Department may notify a committee to take a decision not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

15. Repeal and savings.—(1) The Federal Levies Force Regulation, 2012 and the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No. III of 2019) are hereby repealed.

(2) Notwithstanding the repeal of the Federal Levies Force Regulation, 2012, under sub-section (1), the Federal Levies Force (Amended) Service Rules, 2013 shall continue to remain in force and the terms and conditions of service of all the members of the Levies Force shall be governed thereunder until new rules are made under this Act.

(3) Anything done, action taken, rule made or notification or orders issued under the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ord. No. III of 2019), and the Federal Levies Force Regulation, 2012, shall be deemed valid and the same shall not be called in question in any Court of law.

SCHEDULE
(see section-1(3))

Part-A

S.No.	District.
1.	Bajaur.
2.	Mohmand.
3.	Khyber.
4.	Orakzai.
5.	Kurram.
6.	South-Waziristan.
7.	North-Waziristan.

Part-B

S.No.	Sub-Division.
1.	HasanKhel in district Peshawar.
2.	Darra Adam Khel in district Kohat.
3.	Bettani in district Lakki Marwat.
4.	Wazir in district Bannu.
5.	Jandola in district Tank.
6.	Darazinda in district Dera Ismail Khan.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA.

(AMJAD ALI)
Secretary

Provincial Assembly of Khyber Pakhtunkhwa

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m. R. h.

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POLICE

032102 PROVINCIAL POLICE

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME		NUMBER OF POSTS 2019-2020	BUDGET	RELEASED
			ESTIMATES 2019-2020	2019-2020
		Rs	Rs	Rs
03	PUBLIC ORDER AND SAFETY AFFAIRS			
032	POLICE			
0321	POLICE			
032102	PROVINCIAL POLICE			
MD4294	Inspector Malakand (Levies)		<u>869,847,000</u>	<u>866,673,000</u>
A01	TOTAL EMPLOYEES RELATED EXPENSES.	1835	<u>362,193,000</u>	<u>362,193,000</u>
A011	TOTAL PAY	6	<u>2,044,000</u>	<u>2,044,000</u>
A011-1	TOTAL PAY OF OFFICERS	6	<u>2,044,000</u>	<u>2,044,000</u>
A01101	Total Basic Pay Of Officer		360,000	360,000
I012	Inspector (BPS-17)	1	364,000	364,000
S166	Superintendent (BPS-17)	3	1,080,000	1,080,000
A057	Assistant (BPS-16)	1	240,000	240,000
C082	Computer Operator (BPS-16)			
		1829	<u>360,149,000</u>	<u>360,149,000</u>
A011-2	TOTAL PAY OF OTHER STAFF	1829	<u>360,085,000</u>	<u>360,085,000</u>
A01151	Total Basic Pay Other Staff		903,000	903,000
S035	Senior Clerk (BPS-14)	3	903,000	903,000
S138	Sub Inspector (BPS-14)	15	5,271,000	5,271,000
A149	Assistant Sub Inspector (BPS-11)	33	10,340,000	10,340,000
J013	Junior Clerk (BPS-11)	5	893,000	893,000
H015	Head Constable (BPS-09)	195	50,267,000	50,267,000
C088	Constable (BPS-07)	1494	277,203,000	277,203,000
D112	Driver (BPS-06)	2	343,000	343,000
H305	Head Armourer (BPS-06)	1	295,000	295,000
A824	Assistant Armourer (BPS-03)	1	151,000	151,000
B006	Behishti (BPS-03)	25	4,759,000	4,759,000
B009	Barber (BPS-03)	3	415,000	415,000
C088	Constable (BPS-03)	16	2,966,000	2,966,000
D060	Dhobi (BPS-03)	2	323,000	323,000
K009	Khalasi (BPS-03)	2	296,000	296,000

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032102 PROVINCIAL POLICE

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME		NUMBER OF POSTS 2019-2020	BUDGET ESTIMATES 2019-2020	RELEASED 2019-2020
		Rs	Rs	Rs
03	PUBLIC ORDER AND SAFETY AFFAIRS			
032	POLICE			
0321	POLICE			
032102	PROVINCIAL POLICE			
MD4294	Inspector Malakand (Levies)			
L018	Langari (BPS-03)	1	120,000	120,000
M010	Mnli (BPS-03)	1	141,000	141,000
N005	Naib Qasid (BPS-03)	2	289,000	289,000
P022	Pesh Imam (BPS-03)	1	132,000	132,000
S078	Shoe Maker (BPS-03)	1	232,000	232,000
S162	Sweeper (BPS-03)	25	4,623,000	4,623,000
T005	Tailor (BPS-03)	1	123,000	123,000
			64,000	64,000
A01152	Personal pay		<u>507,654,000</u>	<u>504,479,000</u>
A012	TOTAL ALLOWANCES		<u>504,279,000</u>	<u>504,279,000</u>
A012-1	TOTAL REGULAR ALLOWANCES			
A01202	House Rent Allowance		35,500,000	35,500,000
A01203	Conveyance Allowance		43,182,000	43,182,000
A01207	Washing Allowance		3,291,000	3,291,000
A0120D	Integrated Allowance		11,000	11,000
A0120Q	Fixed Daily Allowance		60,622,000	60,622,000
A01210	Risk Allowance		79,013,000	79,013,000
001	Risk Allowance		79,013,000	79,013,000
A01217	Medical Allowance		33,056,000	33,056,000
A01226	Computer Allowance		18,000	18,000
A01229	Special compensatory allowance		22,068,000	22,068,000
A0122D	Special Risk Allowance		68,166,000	68,166,000
A0122M	Adhoc Relief Allowance 2016		28,066,000	28,066,000
A0122N	Special Conveyance Allowance to Disabled Employees		48,000	48,000
A0122Y	Ad-hoc Relief Allowance 2017		35,363,000	35,363,000
A01233	Unattractive Area Allowance		22,032,000	22,032,000
001	Unattractive Area Allowance		22,032,000	22,032,000
A0123G	Ad-hoc Relief Allowance-2018		35,363,000	35,363,000
A01250	Incentive Allowance		16,842,000	16,842,000
001	Incentive Allowance		16,842,000	16,842,000
A01260	Ration Allowance		14,881,000	14,881,000
A01261	Constabulary Allowance for Police Personnel		6,743,000	6,743,000

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m.k.d

S.I.

(31)

NC21120 (061)
POLICE

032102 PROVINCIAL POLICE

FUNCTIONAL CUM OBJECT CLASSIFICATION AND PARTICULARS OF THE SCHEME		NUMBER OF POSTS	BUDGET ESTIMATES	RELEASED
		2019-2020	2019-2020	2019-2020
		Rs	Rs	Rs
03	PUBLIC ORDER AND SAFETY AFFAIRS			
032	POLICE			
0321	POLICE			
032102	PROVINCIAL POLICE			
MD4294	Inspector Malakand (Levies)		14,000	14,000
A01270	Other		14,000	14,000
001	Others			
			<u>3,375,000</u>	<u>700,000</u>
A012-2	TOTAL OTHER ALLOWANCES(EXCLUDING TA)			
			175,000	
A01273	Honoraria		3,000,000	
A01274	Medical Charges		3,000,000	
001	Medical Charges		200,000	200,000
A01278	Leave Salary		200,000	200,000
001	Leave Salary			
			<u>39,055,000</u>	<u>14,488,750</u>
A03	TOTAL OPERATING EXPENSES			
			<u>1,610,000</u>	<u>402,500</u>
A032	TOTAL COMMUNICATIONS			
			110,000	27,500
A03201	Postage and Telegraph		1,000,000	250,000
A03202	Telephone and Trunk Call		500,000	125,000
A03270	Others			
			<u>6,380,000</u>	<u>6,220,000</u>
A033	TOTAL UTILITIES			
			6,000,000	6,000,000
A03303	Electricity		6,000,000	6,000,000
001	Electricity		880,000	220,000
A03304	Hot and Cold Weather Charges			
			<u>2,501,000</u>	<u>625,750</u>
A034	TOTAL OCCUPANCY COSTS			
			2,500,000	625,000
A03402	Rent for Office Building		1,000	250
A03403	Rent for Residential Building			
			<u>120,000</u>	<u>30,000</u>
A036	TOTAL MOTOR VEHICLES			
			120,000	30,000
A03603	Registration			
			<u>18,600,000</u>	<u>4,650,000</u>
A038	TOTAL TRAVEL & TRANSPORTATION			
			2,000,000	500,000
A03805	Travelling Allowance		2,000,000	500,000
001	Travelling Allowance			

e.T.C
m. Lal

SL



کھور جناب ...

دو خواست لیدت مراد ...

نزار حسب ذیل ہے

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32A

To,

The Worthy Chief Secretary,
Khyber Pukhtunkhwa, Peshawar

Subject:

**DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED SERVICE RULES/NOTIFICATION DATED
22/03/2021 AND 21/10/2021 AND THE IMPUGNED
RETIREMENT ORDER DATED 26/01/2022 WHERE
THE APPELLANT HAS PREMATURELY AND UNDER
THE REPEAL RULES BEEN RETIRED FROM
SERVICE**

Respected Sir,

That appellant submits as under:

1. That the appellant is the employee of Malakand Levies and right from appointment till date is performing his duty quite efficiently.
2. That it is important to mentioned here that the appellant terms and conditions of services, prior to the promulgation of the 25th Constitutional Amendment Act, were regulated by the PATA Levies Force Regulation, 2012 read with the PATA Federal Levies Force Service (Amendment) Rules, 2013 and vide Rule 17 read with Schedule-III of the Regulation, 2013 the retirement age was specified therein.
3. That after the promulgation of the 25th Constitutional Amendment Act, 2018 the then FATA and PATA were merged into the province of Khyber Pakhtunkhwa and the Forces were also absorbed into the regular police of Khyber Pakhtunkhwa through different enactments. Similarly the Levies Forces of the then PATA were also absorbed in the Khyber Pakhtunkhwa Police vide Section 9 of the Khyber Pakhtunkhwa Levies Force Act, 2019 w-e-f 16/09/2019. That it is important to mention her that according to Section 9(2) of the Act ibid until the absorption in the Police, the Levies Force terms and conditions shall be governed by the Regulation of 2013.
4. That it is pertinent to mention here that vide Notification of the Khyber Pakhtunkhwa Levies Force (Absorption in the Khyber Pakhtunkhwa Police) Rules 2019 was promulgated and vide section 3 of the Rules ibid the Levies Force were absorbed permanently in the Khyber Pakhtunkhwa Police. That with

32B

promulgation of the Rules ibid the already existent service rules i.e. Regulation of 2012 and Regulation of 2013 and all the rules and notification issued under the old rules and regulation became ineffective and inoperative over the appellant as well as over all the forces of the PATA and the Civil Servant Act, 1973 the Police Act, 2017 and the Police Rules, 1934 became operative over the appellant and other Levies Forces.

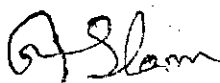
5. That astonishingly the Secretary Home & Tribal Affairs issued the impugned notification dated 22/03/2021 whereby the retirement age of the then Levis Force now Police Force has again been determined as per Rule 17 of the Regulation, 2013 despite the fact that the Regulation 2013 has no legal status after the promulgation of the Absorption Rule, 2019 as the Levies Force has attain the regular police and are now absorbed permanently, so the notification dated 22/03/2021 is null and void ab initio and is issued by an incompetent authority.
6. That in light of the impugned notification dated 26/01/2022, the appellant is retired from service vide impugned order dated 26/01/2022, irrespective of the fact that the appellant are now civil servant and the respondent/department has no authority to issue the impugned retirement order dated 26/01/2022 being coram-non-judice.
7. That it is important to mention here that the appellant is now attain the status of a regular civil servant and under the Khyber Pakhtunkhwa Civil Servant Act, 1973 the age of retirement has clearly been described, so the impugned retirement order are in nullity, void ab initio and against the law and rules.

It is, therefore, most humbly prayed that on acceptance of this Departmental Appeal the impugned service rules/notification dated 22/03/2021 and 21/10/2021 and the impugned retirement order dated 26/01/2022 may very kindly be set aside and the appellant be reinstated into service with all back benefits.

Appellant

Said Ul Islam
Naib Subidar
Malakand Levies

Date: 18/11/2021



33

33



OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES

NO. 9179 /LC
DATED MALAKAND THE 06/12/2021
Phone: 0932-452080 Fax: 0932-450557

To,


No.3826 Naib Subedar Said Islam of Malakand Levies.

Subject:- APPLICATION FOR PROMOTION TO THE POST OF SUBEDAR

Memo:-

I am directed to refer to subject cited above. In this regard, your application perused and record of this office also perused which reveals that since the case is subjudice before the Honorable Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat. Therefore no further action is required to be taken till the final verdict of the Honorable Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat.

Hence, you are informed accordingly.


SUPERINTENDENT
MALAKAND LEVIES MALAKAND

ASL



36 "H"
OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES

NO. _____/LC
DATED MALAKAND THE 26/01/2022
Phone: 0932-452080 Fax: 0932-450557

OFFICE ORDER

In pursuance of Notification No.SO(Police-II)/HD/1-3/Federal Levies 2021 Amended Service Levy Rules 2021 Schedule III dated 21-10-2021, issued by Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar and order Sheet dated 18-01-2022 passed by Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat in Writ Petition No.1207-M/2021, No.3826 Naib Subedar Said-ul-Islam of Malakand Levies, who has completed the requisite 33-Years Service stands retired from service with effect from 23-12-2021 (AN) with full pensionary benefits as per relevant pension rules, in the change circumstances the law shall follow its own course.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 684-89/LC

Copy forwarded to the:-

1. Additional Registrar, Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat for information, please.
2. Section Officer (Police-II), Home & TA's Department Khyber Pakhtunkhwa Peshawar for information with reference to Notification referred above.
3. District Account Officer, Malakand.
4. Subedar Major Malakand Levies.
- ✓ 5. Official Concerned.

For information & necessary action.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

0246935562

No: 3826
Naib Subedar
Said - ul - Islam

(35)

Annexure - (1)
[Handwritten initials]



**GOVERNMENT OF KHYBER PAKHTUNKHWA
 HOME & TRIBAL AFFAIRS DEPARTMENT**

NO. 30 (POLICE-II)/HD/1-3/2020/MKD/LEVIES
 Dated Peshawar the 21-10-2021

To:

1. All Divisional Commissioners,
2. The Deputy Commissioners/Commandants Levies,
 Malakand, Swat, Dir Upper, Lower Dir, Upper Chitral,
 Lower Chitral, Hangu, Kohat, Karak, Lakki Marwat & Torghar.

Subject: -

**CHIEF MINISTERS DIRECTIVES- RESTORATION OF SCHEDULE-
 III OF FEDERAL LEVIES RULES, 2013 AND SCHEDULE-IV OF
 PROVINCIAL LEVIES RULES, 2015.**

Dear Sir,

I am directed to enclose herewith a copy of Notification dated 21-10-2021 of Amendment in Federal Levies Rules 2013, for your perusal and further necessary action, please

Yours faithfully,

[Signature]
 Section Officer (Police-II)
 Ph No. 091-9210503 Fax No. 9210201
 21/10/2021

Copy forwarded to:-

1. PS to Home Secretary, Khyber Pakhtunkhwa.
2. PS to Special Secretary Home, Khyber Pakhtunkhwa.
3. PA to Additional Secretary Home, Khyber Pakhtunkhwa.
4. PA to Deputy Secretary Home, Khyber Pakhtunkhwa.

[Handwritten initials]

(36)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT**

NOTIFICATION

Peshawar, dated the 21-10-2021

NO. SO(POLICE-II)HD/1-3/FEDERAL LEVIES 2021:- In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, and in continuation of this department notification No. SO(Police-II)HD/MKD/Levies/Misc/2020 dated 22-03-2021, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

SCHEDULE-III

S. No.	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (BS-16)	Thirty Seven Years of service or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier.
2	Subedar (BS-14)	Thirty Five Years of service or Five Years' service as Subedar or Sixty years of age whichever is earlier.
3	Naib Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Naib Subedar or Sixty Years of age whichever is earlier.
2	Hawaladar (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Malik (BS-08)	Twenty nine years of service or forty nine year age whichever is earlier.
6	L/Malik (BS-08)	Twenty seven years of service or forty seven years age whichever is earlier.
7	Sepoy (BS-07)	Twenty five years of service or forty five year of age whichever is earlier.

SCHEDULE-I

S.N	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-14)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Naib Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service as Hawaldar Or Total 17 years of service	100%		
4	Hawaladar (BS-09)	05 years' service as Naik Or Total 13 years of service	100%		
5	Malik (BS-08)	03 years' service as Lance Malik Or Total 08 years of service			
6	L/Malik (BS-08)	05 years' service as Sepoy			
7	Sepoy (BS-07)			100%	SSC
8	Head Armourer (BS-5)	06 years' service as Assistant Armourer	100%		SSC Qualification with certificate of Armourer
9	Assistant Armourer (BS-4)			100%	SSC Qualification with certificate of Armourer

PS

~~39~~ (35) A)

Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. All Commissioners, Khyber Pakhtunkhwa.
6. All Deputy Commissioners, Khyber Pakhtunkhwa.
7. Provincial Police Officers, Khyber Pakhtunkhwa.
8. All Heads of Attached Department in Khyber Pakhtunkhwa.
9. PSO to the Chief Secretary, Khyber Pakhtunkhwa.
10. Accountant General, Khyber Pakhtunkhwa.
11. Direction Information, Khyber Pakhtunkhwa.
12. The Manger Government Printing & Stationery Department, Khyber Pakhtunkhwa. He is requested to publish the above Notification in the Extra Ordinary Gazette of Khyber Pakhtunkhwa and supply 50 copies (Printed) of the same to the Home Department.


Section Officer (Police-II)

21/10/2021

AS

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

W.P.No.367-M/2021 with I.R,
CM Nos.1053/2021 & 1183/2022.

JUDGMENT



Date of hearing --- 29.11.2022.

Barrister. Dr.Adnan for petitioners.

Mr.Saqib Raza, A.A.G for the respondents.

=====

S M ATTIQUE SHAH, J:- Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 450-M/2021, 601-M/2021, 681- M/2021, 632- M/2021, 919-M/2021, 968- M/2021, 980- M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 5092-P/2021, 5423-P/2021, and 5424-P/2021 as adjudication of a common question of law and fact is involved in all the petitions wherein the petitioners have challenged the vires of notification No. SO (Police-II) HD/ MKD/Levies/Misc/2020 dated 22.03.2021 whereby on the basis of impugned office order bearing No.128/DC/CSL dated

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Peshawar High Court

20.04.2021, they have been retired from service with further prayer that they be reinstated into service from the date of their retirement i.e. 20.04.2021 with all back benefits. In alternative, they have prayed that the respondents be directed to treat them at par with erstwhile Federal Levies of Federally Administrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

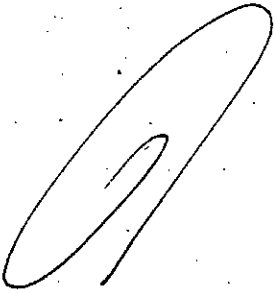
2. Likewise in W.P.Nos.333-M/2021, 334-M/2021, 335-M/2021, 338-M/2021, 345-M/2021, 1026-M/2021, 1035-M/2021, 1187-M/2021, 1206-M/2021, 1207-M/2021, 34-M/2022, 212-M/202 and 993-P/2022 the petitioners have made the following prayer:

"On acceptance of this writ petition, the impugned Notification SO (Police-II) HD/ MKD/Levies/ Misc/2020 is against law and the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, may be declared illegal void ab initio and of no legal effects on the rights of the petitioners."

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Peshawar High Court

Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

3. Brief facts of the case(s) are that the petitioners were appointed in the "Swat Levies Force" as Sepoys etc. and presently terms and conditions of their services are regulated by "Provincially Administrated Tribal Areas Levies Force Regulation 2012" whereunder besides *PATA Levies Force Rules, 2012, PATA Levies Force Service (Amended) Rules 2013* were also framed. Rule 17 of the Amended Rules 2013, deals with the retirement of personnel of the force, which was amended vide notification dated 12.12.2013 in the manner that **"All the personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted"**. On 14.07.2020, vide Notification No.SO



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Peshawar High Court

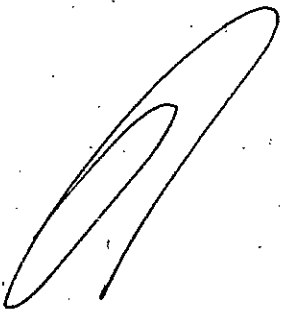
(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as "**All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service**". Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

"Retirement; All levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted."

4. Being aggrieved from the ibid amendment, the petitioners have filed the instant petitions.

5. Pursuant to the directions of this court respondents have filed their parawise comments, wherein issuance of the desired writs has been opposed.

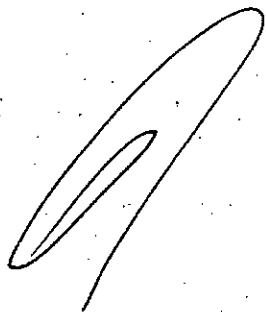
6. Learned counsel representing the petitioners vehemently argued that the



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impugned Notification is arbitrary, perverse, illegal, issued without lawful authority and *mala fide* intention just to deprive the petitioners of their vested rights accrued in their favour hence violative of their fundamental rights guaranteed under the Constitution and thus not sustainable in the eye of law. That though the impugned Notification was issued under the regulation 2012. However, after the 25th Constitutional amendment, the said regulation does not hold field, therefore, the impugned Notification is liable to be set aside.

7. Conversely, worthy AAG representing the respondents opposed the arguments so advanced by learned counsel representing the petitioners at the bar while arguing that after the 25th amendment the Provincial Assembly passed the continuation of laws Act No.111 of 2019 through which the laws applicable to erstwhile PATA were allowed to continue including "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and;

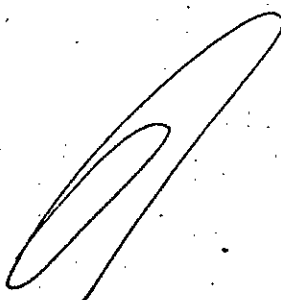


ATTESTED
EXAMINER
Peshawar High Court

therefore, the impugned Notification was issued per law which does not require any interference by this court in its writ jurisdiction under Article 199 of the Constitution. Further, petitioners are Civil Servants, and; matter in question revolves around the terms and conditions of their service which is the exclusive domain of the Service Tribunal as such the jurisdiction of this court is barred given the explicit provision of Article 212 of the Constitution.

8. Heard. Record perused.

9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the *Levies Force* were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962* which was substituted by the "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" (regulation) and under the said regulation "*PATA Levies*



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Peshawar High Court

Force (service) Rules, 2012 were framed for *Provincial Levies Force*. While separate service rules were also framed thereunder for *PATA Federal Levies Force* performing duties in "PATA" known as "*PATA Federal Levies Force Service (Amended) Rules 2013*". Rule 17 of the *ibid* rules deals with the retirement of the *Levies* personnel which was amended from time to time. However, petitioners have become aggrieved from the impugned Notification vide which the petitioners' retirement age was altered which is challenged by them through instant petitions.

10. The main contention of the petitioners is that after 25th amendment the regulation has lost its efficacy and sanctity and has become redundant, therefore, the impugned amendment under the said regulation is illegal being void ab initio. It is worth mentioning that after the 25th amendment in 2018, both *FATA & PATA* were merged in the province of *Khyber Pakhtunkhwa* and *Federal Levies Force*

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working in *FATA* was merged into the regular police of the province. Albeit, in Malakand Division, *Levies Force* is still regulated by "*PATA Federal Levies Force Service (Amended) Rules 2013* in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through which the laws prevalent in erstwhile *PATA* at the time of 25th amendment were allowed to continue including regulation 2012 which still holds the field and as such the same is a valid instrument. Therefore, impugned Notification was issued by the respondents with lawful authority.

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding *W.P No 528-M/2016 (Ikramullah's case)* determined the status of personnel of the *Provincial Levies Force* as that of civil servants in the following terms:-

"19. The *Provincial Levies Force ("Force")* was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of

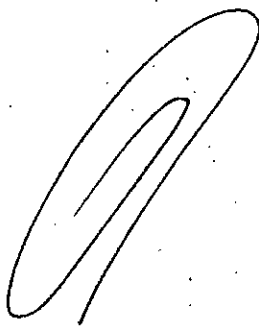
ATTESTED
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2014 ("**Regulation**"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

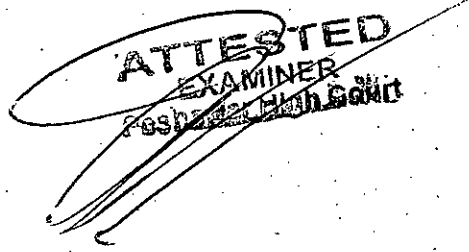
"3. Power to constitute and maintain by the Force and its functions.-- (1) Government may constitute and maintain a Force for performing the following functions, namely:

- (a) ensuring security of roads in PATA;
- (b) ensuring security and manning of piquet;
- (c) guarding Government institutions and installations;
- (d) ensuring security of jails and arrested criminals;
- (e) generally maintaining law and order providing mobile escort to VIPs;
- (f) anti-smuggling activities especially timber smuggling;
- (g) destruction of illicit crops;
- (h) serving of summons or procedures;
- (i) raid and ambush; and
- (j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.

(2) In discharge of their functions, officers and staff of the Force shall



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be guided in accordance with this Regulation and the rules.

(3) The head of the Force shall be Commandant in his respective jurisdiction.

(4) Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.

(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

(6) The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.

(7) The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.

(8) The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.

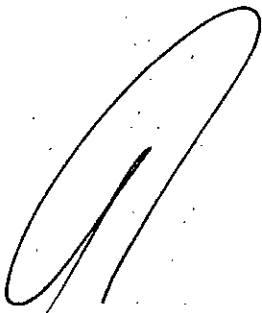
(9) The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.

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Peshawar District Court

4. Powers and duties of officers and members of the Force.—An officer or member of the Force shall-

- (a) take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;
- (b) prevent unauthorized persons and vehicles from access to the territorial jurisdiction;
- (c) take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;
- (d) use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;
- (e) search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and
- (f) perform such other legal functions as the competent authority may require him to perform".

20. The close perusal of the Regulation would clearly show that the Force is receiving its salary from the Provincial



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Peshawar High Court

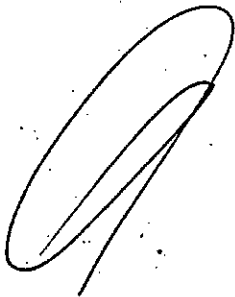
Exchequer and performs the policing service in the erstwhile PATA.

21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

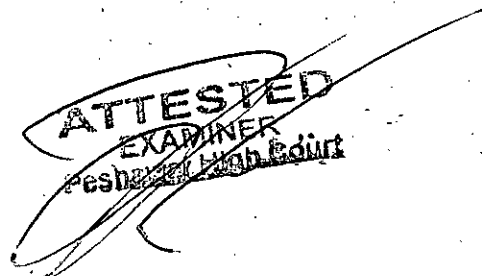
22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 ("**Act, 1973**"). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a)
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—



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 EXAMINER
 Federal High Court



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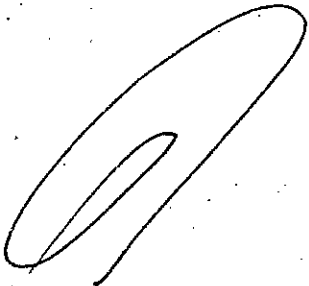
- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servant. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

"260.

(1).....

"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora



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(Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined -

- (a)
- (b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing

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day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd. Tokht Bhai and 10 others (PLD 1975 Supreme Court 244).

In the said judgment, the Apex Court has held:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the

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Federal Government or a Provincial Government".

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area, however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of *Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-*

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177 Ex-DSR Muhammad Nazir
(1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal..."

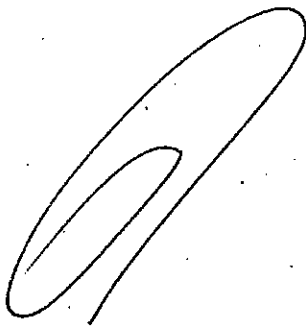
26. Similarly, in the case of **Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and**

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others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of 1915. Relevant paragraphs of the said judgment are reproduced as under:-

"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case



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ibid (at pp. 686-689 of the law report). The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, *inter alia*, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for

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the better protection and administration of those parts. Section 5(1) of the Act *ibid* vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed

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in the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of" Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubeen-us-Salam case *ibid* endorses this point of view:-

"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."

27. Similarly, this Court in the case of Gul Munir vs. The

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Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others

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vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib Khan and others (2018 SCMR 903), thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in **Gul Raqib Khan's case (2018 SCMR 903)** has held that:

"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the

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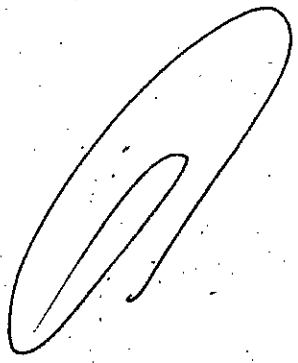
services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (*supra*) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are accordingly allowed in above terms".

When case of the petitioners (PATA Federal Levies Force) was examined in juxtaposition with the Provincial Levies Force and *ibid* judgment, we observed that service of both the forces is governed under the rules so framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation,

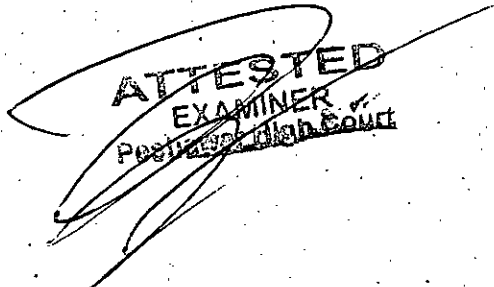
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2012". Therefore, we believe that the status of petitioners is that of civil servants for all practical and material purposes, and as such, the matter of terms and conditions of their service squarely falls outside the ambit of writ jurisdiction of this court given the explicit bar contained in Article 212 of the Constitution. As earlier discussed service rules of the petitioners (*PATA Federal Levies Force*) and *Provincial Levies Force* both were framed under the provisions of "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" and through the *ibid* judgment, the personnel of *Provincial Levies Force* were declared as Civil Servants after exhaustively discussing the matter of *Levies Force* performing their duties in *PATA*. Therefore, on the same premise, we have no hesitation to hold that the petitioners are Civil Servants as their service fulfills the entire criteria of Civil Servants so provided by the law. Learned counsel representing the petitioners could



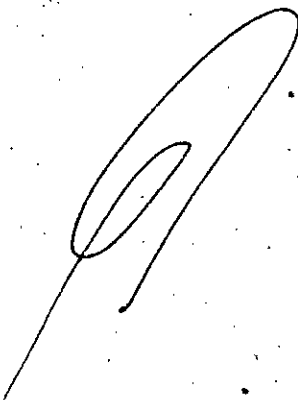
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not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Leavy Force in any manner. Both forces are performing their functions in the same area for the same object and; purpose, and both are being maintained through the provincial exchequer. Therefore, the matters arising out of the terms and; conditions of service of the petitioners are only amenable to the jurisdiction of the Service Tribunal in terms of Article 212 of the Constitution.

So far as the contention of petitioners that they have challenged the vires of the impugned Notification and as such the same are not amenable to the jurisdiction of the Service Tribunal is concerned, suffice it to state that it has long been settled that Service Tribunal has ample jurisdiction to deal with the issue of vires of the law and rules framed thereunder. **2015 SCMR 253 NATIONAL ASSEMBLY SECRETARIAT through Sectrary -V. MANZOOR AHMAD and others.**



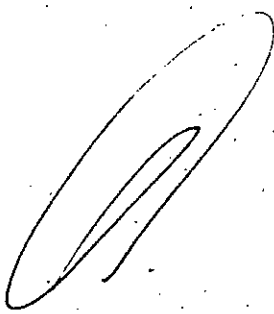
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Therefore, the contention so agitated at the bar is misconceived and as such repelled.

In view thereof, the status of petitioners has been declared as that of Civil Servants and the matter in question revolves around the terms and; conditions of their service which does fall outside the jurisdiction of this court given the barring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However, the petitioners may approach the worthy Service Tribunal for the redressal of their grievance if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court in **Gul Raqib khan's case 2018 SCMR 903.**

COC Nos.38-M/2021 in
W.P.No.367-M/2021 and; COC No.436-



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P/2022 in W.P.No.1335-P/2022 are dismissed for having become infructuous.

[Signature]
JUDGE

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JUDGE

Announced.
Dt.29/11/2022.

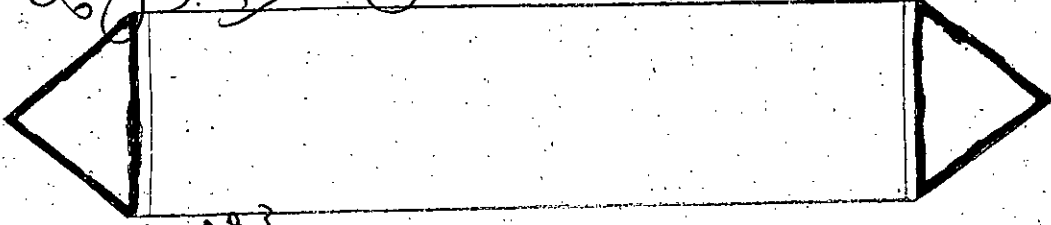
HON'BLE MR.JUSTICE LAL JAN KHATTAK,
HON'BLE MR.JUSTICE S M ATTIQUE SHAH &
HON'BLE MR.JUSTICE SYED ARSHAD ALI

(A-KHAN Court Secretary)

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court Peshawar
Authorised Under Article 187 of
The Constitution of Pakistan
13 MAR 2023
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بعدالت مناسبتوں کے لیے درخواست



میدلسلام بنام حکومت

کے 2023ء منتخب

موضوعہ
مقدمہ
دعویٰ
پریم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی و جواب دہی دکن کاروائی متعلقہ
آن مقام لیکچرار کیلئے معاون علی پو بسٹری اور ایڈووکیٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
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بایدورت ڈگری کرنے اجراء اور وصولی چیک، ورد پیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرنے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری کی طرف یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نمائی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے رہوگا۔
کوئی اتاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے۔ کہ پیردی
مذکور کریں۔ لہذا اولت نامہ لکھد یا کہ شد ہے۔

المرنوم 16 ماہ مارچ 2023

گواہ

ایم منڈرے

بہتیم لکھار

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